

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

FILED
AUG 15 2016
Clerk, U.S. District Court
District Of Montana
Missoula

MICHAEL MARTINDALE,

Plaintiff,

vs.

LEROY KIRKEGARD and MIKE
BATISTA,

Defendants.

CV 15-111-H-DLC-JTJ

ORDER

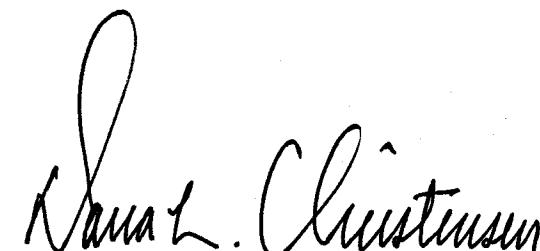
United States Magistrate Judge John Johnston entered his Order, Findings and Recommendations in this matter on July 15, 2016, recommending denial of Defendants' motion to dismiss for failure to state a claim. Defendants failed to timely object to the Findings and Recommendations, and so waived their right to de novo review of the record. 28 U.S.C. § 636(b)(1)(C). This Court reviews for clear error those findings and recommendations to which no party objects. *See McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000) (citations omitted).

Having reviewed the Findings and Recommendations, the Court finds no clear error in Judge Johnston's conclusion that Defendants' motion should be denied. Plaintiff Michael Martindale has stated a plausible claim of supervisory liability against Defendants; (2) his claims for both monetary and injunctive relief survived the prescreening process; and (3) his claims for injunctive relief are not moot, to the extent that he is still subject to the Department of Corrections policies in terms of medical care.

There being no clear error in Judge Johnston's Findings and Recommendations, IT IS ORDERED that:

- (1) Judge Johnston's Findings and Recommendations (Doc. 22) are ADOPTED IN FULL.
- (2) Defendants' Motion to Dismiss for Failure to State a Claim (Doc. 15) is DENIED.

Dated this 15th day of August, 2016.



Dana L. Christensen
Dana L. Christensen, Chief Judge
United States District Court